IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. No. 633/2007

Judgment delivered on: October 24, 2007

U.P. State Road Transport Corporation ..... Appellant
Through: Mr. S.K. Srivastava, Adv.

versus

Smt. Chander Kanta & Ors. ..... Respondents
Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J. Oral:

CM 14325/2007

This is an application for condonation of delay in refiling the appeal. For the reasons stated in the application, the application is allowed.

CM stands disposed of.

MAC APP. No. 633/2007

Feeling aggrieved with the impugned order of the Tribunal, whereby an Award for a sum of Rs. 14,000/- with interest @ 6% p.a. from the date of filing of the petition till realization has been passed in favour of the respondent, the appellant has preferred the present appeal assailing the said order dated 18th October, 2006.

The main thrust of argument of the counsel for the appellant is that the Tribunal has ignored the evidence led by the appellant and has given undue weightage to the evidence adduced by the respondent/claimant. The contention of the counsel for the appellant is that the case in question is a case of contributory negligence where not only the vehicle owned by the appellant, but the vehicle i.e. fiat Car No. DNH-1485 in which the appellant was travelling, was equally involved. Counsel for the appellant thus submitted that the liability of the claim amount was to be apportioned by the Tribunal and the appellant alone could not have been held responsible for the said accident.

I have heard learned counsel for the appellant at a considerable

length and have perused the records. The Tribunal has threadbare discussed the aspect of the negligence in the impugned Award. The Tribunal in its finding has observed that the FIR was registered by the police only against the bus driver of the appellant and chargesheet has also been filed against him. This fact has not only been admitted by the driver of the appellant bus but also the conductor of the offending bus, who gave his deposition as RW-2. The Tribunal also observed that no FIR was registered against the driver of the fiat car and this circumstance in itself would be enough to show that there was no contributory negligence on the part of the driver of the said fiat car. The Tribunal also observed that testimony of PW1 remained unchallenged, who specifically testified that the impact of the offending vehicle was so strong that the car was dragged by the bus up to a considerable distance. It would be thus manifest that the Tribunal has given reasons for arriving at the said finding of the fact on the aspect of negligence.

'Negligence' is a species of law of torts. Accordingly, negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations, who

ordinarily by reason of conduct of human affairs would do or be obligated to, or by doing something which a prudent man would not do. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence can be either contributory negligence or composite negligence. In the instance case we are concerned with contributory negligence. The question of contributory negligence arises when there has been some act or omission on the claimants part, which is materially contributed to the damage caused, and is of such a nature that it may properly be described as negligence. In the instant case on perusal of the award and after going into the reasoning of the Tribunal, it is clear that the question of contributory negligence does not arise.

I do not find any infirmity or perversity in the finding arrived at by the Tribunal. There is no merit in the appeal. The same is dismissed.

October 24, 2007 **KAILASH GAMBHIR J.**
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